Before the
**FEDERAL COMMUNICATIONS COMMISSION**
Washington, DC 20554

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| In the Matter of | ) | |
| | ) | |
| Rural Digital Opportunity Fund | ) | WC Docket No. 19-126 |
| | ) | |
| Connect America Fund | ) | WC Docket No. 10-90 |

To: The Commission

# COMMENTS OF FRONTIER COMMUNICATIONS CORPORATION

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**TABLE OF CONTENTS**

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| | | |
|---|---|---|
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| | ) | |
| Rural Digital Opportunity Fund | ) | WC Docket No. 19-126 |
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## I. INTRODUCTION AND SUMMARY

Frontier Communications Corporation ("Frontier") applauds the Commission's efforts in the *Rural Digital Opportunity Fund NPRM* to support the further expansion of broadband networks in rural America.[1] As a leading telecommunications and broadband provider with a strong focus on rural areas, Frontier shares the Commission's commitment to expanding broadband and digital opportunities in rural America. As part of our company's commitment to rural service, Frontier has been a major participant in the Connect America Fund ("CAF") Phase II program. Indeed, Frontier was the first company to make statewide commitments to accept CAF Phase II model-based support, for over 774,000 customer locations in 29 states. Frontier also participated in the CAF Phase II auction process. Based on Frontier's experience, there can be no doubt that the investments supported through the Connect America Fund are helping to achieve the Commission's purpose of connecting rural homes and businesses to high-speed broadband services. Leveraging these investments has resulted in tangible benefits for the

[1] *Rural Digital Opportunity Fund*, Notice of Proposed Rulemaking, WC Docket No. 19-126, FCC 19-77 (rel. Aug. 2, 2019) ("*NPRM*").

citizens of these rural communities in Frontier's service territory, from a world-class robotics and career preparation program at a high school in Bonners Ferry, Idaho, to a computer lab for grade school students at a community health center in Desert Hot Springs, California.[2]

As the Commission has correctly recognized, however, there is more that can and should be done to expand broadband and digital opportunities in rural areas. Frontier believes that the Rural Digital Opportunity Fund ("RDOF") is an appropriate vehicle to achieve this goal. In light of the proposed scale and timeframe of this program, however, it is important to recognize that the implications of the decisions the Commission makes in this proceeding will have far-reaching consequences for rural consumers and broadband providers alike. As discussed in more detail below, Frontier urges the Commission to allocate the RDOF funds based on the most current and accurate mapping data possible. Should the Commission elect to allocate funds before it has collected and verified the accuracy and completeness of the broadband mapping data, however, RDOF support should be limited to wholly unserved census block groups – what may be the minimum viable bidding unit to minimize the amount of overbuilding and inefficiency caused by auctioning the same areas twice. Additionally, to ensure accountability and the most cost-effective use of funds, the Commission should adopt additional safeguards to protect against the possibility that RDOF awardees will not be able to meet their obligations under the program. Finally, Frontier makes several suggestions to ensure that consumers do not get left behind during the transition from the CAF Phase II to RDOF.

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[2] *See Connecting the Future: Frontier's Commitment to Rural America* (Nov. 16, 2017), https://frontier.com/corporate/responsibility/policy-blog/connecting-the-future.

## II. THE COMMISSION'S ALLOCATIONS OF BROADBAND SUPPORT OVER THE NEXT DECADE MUST BE BASED ON CORRECT AND CURRENT MAPPING DATA

### A. There is Broad Consensus that Broadband Funding Must be Allocated Based on Accurate Data.

It is laudable that the Commission has identified over $20 billion in universal service funding to support broadband deployment, but the magnitude of the program only raises the stakes for ensuring that this large amount of funding is allocated efficiently to the areas where it is truly needed. Frontier believes that the best course of action to maximize the benefits from the RDOF is to utilize the most current and accurate broadband mapping data as possible.

As several members of Congress have observed, the allocation of the next major phase of broadband deployment funding is far too important of a decision to make based on outdated or inaccurate data. For example, Senator Roger Wicker, Chairman of the Senate Commerce Committee, has stated correctly that:

> "To close the digital divide, we need to have accurate broadband maps that tell us where broadband is available and where it is not available at certain speeds. This is critical because maps are used to inform federal agencies about where to direct broadband support. Flawed and inaccurate maps ultimately waste resources and stifle opportunities for economic development in our rural and underserved communities."[3]

Similarly, Representative Greg Walden, Ranking Member of the House Energy and Commerce Committee, stated that he "hope[s] this time when we look at infrastructure expansion in America to connect places that we get the mapping first. That we focus on the areas that are unserved first and connect this country to one of the most important economic and social tools in

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[3] *Hearing on Broadband Mapping: Challenges and Solutions Before the U.S. Senate Committee on Commerce, Science, & Transportation* (Apr. 10, 2019) (Majority Statement of Chairman Roger Wicker), https://www.commerce.senate.gov/public/index.cfm/hearings?ID=1B786B30-9A80-4307-AC3B-F42DF79C474D.

our history."[4] A group of U.S. Senators recently underscored this point in a letter to Chairman Pai that "[p]recise, granular, and accurate data is essential to determining which parts of the country remain unserved and where to most efficiently target broadband deployment funding."[5] And in May of this year, Representative Mike Doyle, Chairman of the House Communications and Technology Subcommittee, stated that he is "concerned about old and faulty data being used to justify Commission decisions."[6]

In this vein, Frontier's own experience confirms that inaccurate broadband mapping data reduces the effectiveness of broadband deployment subsidies. As a participant in the CAF Phase II auction, Frontier found that inaccurate maps created an enormous amount of upfront work to vet whether locations specified to be served actually existed in the census block. This effort added significant administrative costs to the bidding process, which in turn can pose a significant obstacle to the deployment of broadband service and also depletes resources that would be better used on actually deploying broadband.

Inaccurate mapping also leaves areas unserved and leads to unnecessary gaps in the networks constructed through the program. This is especially true at the sub-census block level.

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[4] *Hearing on Defining and Mapping Broadband Coverage in America Before the House Subcommittee on Communications and Technology, Committee on Energy and Commerce* (June 21, 2017) (Livestream beginning at 37:04), https://energycommerce.house.gov/committee-activity/hearings/hearing-on-defining-and-mapping-broadband-coverage-in-america.

[5] Letter from Sens. Shelley Moore Capito, Brian Schatz, Jerry Moran, and Jon Tester to The Honorable Ajit Pai, Chairman, FCC (Jul. 11, 2019), https://www.capito.senate.gov/imo/media/doc/071019_Letter%20to%20FCC%20on%20Broadband%20Mapping%20and%20Shapefiles.pdf.

[6] *Hearing on Accountability and Oversight of the Federal Communications Commission* (May 15, 2019), (Statement of Chairman Mike Doyle) https://docs.house.gov/meetings/IF/IF16/20190515/109479/HHRG-116-IF16-MState-D000482-20190515.pdf.

These types of errors are particularly likely if the Connect America Cost Model ("CAM") undercounts locations in eligible census blocks, which is more likely due to the model's reliance on 2010 data. In Frontier's view, these errors plagued the CAF Phase II auction process.

Further, inaccurate mapping risks a serious waste of public resources through overbuilding by auctioning the same census block groups twice. Available evidence in the record suggests that this issue will be pervasive. USTelecom has explained that based on available data, "over 6 million rural locations in CBs reported as 'served' potentially do not have 25/3 Mbps broadband."[7] That is, while there are, by the Commission's estimates, roughly 3.9 million locations currently eligible for Phase I, mapping may reveal more locations – and locations that have never received government funding – when the Commission readies for the proposed Phase II auction. This shortcoming in the current data creates the risk that new, unserved locations will be discovered in areas that were already auctioned in Phase I. While the Phase I winning carrier may have a built-in advantage in a Phase II auction to serve such locations as a result of having won the other locations in the census block group, it will either receive inflated funding because the block is being auctioned twice and a competitor cannot reasonably compete with partial subsidization, or the government will be funding two networks in the same census block groups. These initial analyses reveal that it is critical to scope this problem further – by moving ahead with the USTelecom mapping proposal and similar pilots – rather than putting money out first and getting data later.

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[7] Letter from Mike Saperstein, Vice President Policy and Advocacy, USTelecom to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-126 (filed June 24, 2019) ("USTelecom June 24 Ex Parte").

None of this is news to the Commission, of course, as, concurrently with opening this proceeding, the Commission took steps to begin collecting better broadband deployment data. The Commission stated:

> Accurate broadband deployment data is critical to the Commission's efforts to bridge the digital divide. Effectively targeting federal and state spending efforts to bring broadband to those areas most in need of it means understanding where broadband is available and where it is not.[8]

Frontier emphatically concurs. It would be inexplicable to begin the process of collecting better data for the purpose of improving the allocation of support, and then allocate the bulk of the next decade's support without the benefit of the new data.

For these reasons, the Commission should work quickly to obtain more accurate and up-to-date information on the current state of broadband deployment, and base RDOF on that data.

### B. There is Also Broad Consensus that the Commission Lacks Accurate Broadband Mapping Data Today for the Areas Most in Need of Broadband.

To advance the Commission's core goal of ensuring that broadband services are deployed to unserved or underserved areas, it will be critical to ensure that universal service support is appropriately targeted to specific geographic areas. As government and business leaders throughout the country have pointed out, however, the Commission's data on broadband deployment significantly overstates the extent of actual coverage. For example, the congressional delegation from South Dakota has noted that, "[i]n the context of fixed broadband, an entire census block, which can be a large area in rural America, will appear as served even if service is offered to only one location within that census block. This can ultimately result in the

[8] *Establishing the Digital Opportunity Data Collection, Modernizing the FCC Form 477 Data Program,* Report and Order and Second Further Notice of Proposed Rulemaking, FCC 19-79 ¶ 1 (rel. Aug. 6, 2019).

denial of funding or financing in such areas, leaving many locations without essential broadband service because they share a census block with a served household."[9] So for example, a census block that includes dozens of homes spread out over several square miles may be ineligible for funding simply because a handful of households on the edge of the census block have broadband service, yet the other households miles away have no access to broadband.[10] Similarly, a group of U.S. Senators have observed that "the Commission's census block-based data collection and reporting can overstate overage, especially in geographically large census blocks."[11]

The Broadband Mapping Consortium's pilot program recently confirmed that there are significant gaps in the current information regarding broadband and mapping.[12] Specifically, it showed that Form 477 data is imprecise and that many customer locations are misidentified in

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[9] Letter from Sens. John Thune, M. Michael Rounds, and Dusty Johnson to The Honorable Ajit Pai, Chairman, FCC (May 9, 2019), https://www.thune.senate.gov/public/_cache/files/fdc37f45-dd8b-4d8c-9c4d-29810fade979/64FAEBE0B00AA39395EBB00EB68C4326.jrt.mmr.dj-signed-letter.pdf.

[10] The Commission has noted this in its concurrent data collection notice. *See Establishing the Digital Opportunity Data Collection,* Report and Order and Second Further Notice of Proposed Rulemaking, FCC 19-79, ¶ 21 (rel. Aug. 6, 2019) ("We find that the approach we adopt, in which fixed providers will create broadband coverage polygons that depict their actual service areas, would, as NCTA asserts, 'be a significant improvement over census-block reporting because unserved areas within served census blocks would no longer be counted as served.' In turn, more granular data about areas where broadband is available will enable us to target unserved locations more precisely, especially in many rural areas that continue to lack broadband service.") (internal footnote omitted).

[11] Letter from Shelley Moore Capito *et al.*, *supra* n.5.

[12] *See* Ex Parte Letter from USTelecom, WISPA and ITTA to Marlene S. Dortch, Secretary, FCC, WC Docket No. 19-195 *et al.* (Aug. 20, 2019) ("USTelecom Mapping Ex Parte"), https://www.ustelecom.org/wp-content/uploads/2019/08/USTelecom-Mapping-Pilot-Filing-and-Findings.pdf.

commercial location geocoding databases.[13] The pilot suggests that there could be as many as 445,000 unserved locations in "served" census blocks in two states alone.[14] These otherwise unidentified locations will be left unserved if the RDOF is based on the CAM and its cost estimates, which are based on 2010 Census data and commercial data from 2012,[15] now nearly a decade out of date. Basing the RDOF on this type of data would result in misallocation of scarce universal service funding by leaving some Americans unserved and allocating support to areas where the need for support is less urgent – missing completely the areas that have never received universal service funding because they have been shielded from view by the current data. Making matters worse, compliance challenges inevitably result where the model data identify more locations than exist today.[16]

### C. There is a Roadmap for Obtaining Accurate Broadband Location Data in a Reasonable Time.

There is no need for the Commission to rely on existing, demonstrably inaccurate data sets for allocating RDOF support because USTelecom's pilot has demonstrated that it is possible to obtain concrete and extremely accurate mapping data in a timely and cost-effective manner. Estimates are that the entire country could be completed in twelve to fifteen months at an upfront

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[13] *Id.* at 2.

[14] *See id.*, Att. at 7.

[15] *See Connect America Fund, High-Cost Universal Service Support,* Report and Order, 28 FCC Rcd 5301, 5322 ¶ 52 (2013).

[16] *See, e.g.,* Midwest Energy Cooperative d/b/a Midwest Energy & Communications Petition for Waiver, WC Docket No. 10-90, WC Docket No. 14-259, at 1 (filed Aug. 21, 2019) ("The Commission's Connect America Cost Model initially used 2012 GeoResults and the 2010 Census to estimate that 421 locations needed broadband facilities, but now that Midwest has completed its construction, only 364 geocoded locations exist in the census blocks won by Midwest.").

cost of $8.5 to $11 million, with the higher end of this cost range applying if the outputs must be fully open-source.[17] Fifteen months is not much longer than it would take the Commission to finalize rules and procedures for an auction. Therefore, the Commission should move as quickly as possible to deploy the broadband serviceable location fabric approach throughout the remaining states and base the RDOF on the accurate information thus collected.

## III. IF ANY RDOF FUNDING IS DISTRIBUTED BEFORE ACCURATE DATA IS AVAILABLE, IT SHOULD BE FOCUSED ON WHOLLY UNSERVED CENSUS BLOCK GROUPS

The *NPRM* states that the proposed "two-phase approach will ensure that *completely unserved areas* are prioritized, so that support can begin to flow quickly while we work to improve the data needed to most efficiently target support over the longer term."[18] Yet the actual RDOF proposal is not structured this way. Specifically, the *NPRM* proposes to make RDOF Phase I support available in "census blocks that are wholly unserved *with broadband at speeds of 25/3 Mbps*."[19] Thus, the *NPRM* would put areas that currently have, for example, 10/1 service on the same priority level or indeed at a higher priority level as areas with no service at all – areas that in large part have been funded the last six years for broadband deployment under CAF Phase II. And it would do so for purposes of allocating the bulk of the RDOF funding – the Commission's primary broadband deployment incentive tool for the next decade.

To the extent that the Commission feels that it must distribute some RDOF funding before good broadband mapping data is available, the Commission should focus such support on

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[17] USTelecom Mapping Ex Parte, Att. at 5.

[18] *NPRM* ¶ 12 (emphasis added).

[19] *Id.* ¶ 45 (emphasis added).

areas that *entirely* lack broadband service across the census block group.[20] This will avoid overbuilding across CAF Phase II, RDOF Phase I, and RDOF Phase II and allow for efficiency in network design, construction, and deployment because the provider will be building to wholly-unserved areas rather than areas where there are very likely neighboring locations hidden by served blocks. For example, it reduces the instances of the inefficiency of an unserved location in a partially served census block being across the street from an eligible location. Allowing carriers to bid on completely unserved census block groups reduces overbuilding and avoids the cost of the FCC having to re-auction the same census block groups in two auctions, with all of the inefficiencies and distortions that would entail. This approach has the added benefit of advancing the Commission's goal of serving the most people for the lowest price.

By prioritizing the areas known to be unserved across the group – or taking a similar incremental approach – the Commission can continue to gather the data it needs to get the next decade of broadband funding right and make sure it is focused on the truly unserved. Additionally, as discussed immediately below, the Commission can gather important feedback regarding whether the CAF Phase II auction successfully selected winners that will be able to perform.

[20] USTelecom June 24 Ex Parte at 2 ("Our analysis revealed that there are 2,683 CBGs nationwide that are reported as entirely unserved at 25/3 Mbps. All of these CBGs are in rural areas and they contain approximately 724,000 unserved housing units, slightly more than the number won in last year's CAF II auction.").

## IV. THE RDOF AUCTION RULES SHOULD CORRECT SHORTCOMINGS IN THE CAF PHASE II RULES AND BETTER ENSURE THAT ONLY PARTIES THAT CAN PERFORM ARE ABLE TO BID AND WIN

The *NPRM* proposes to use the CAF Phase II auction rules as the basis for the RDOF auction rules.[21] While the CAF Phase II auction successfully allocated support across a broad area in a seemingly economical fashion, it remains to be seen whether it was successful at selecting providers that will be able to perform to the Commission's specifications. The first enforceable deadline for CAF Phase II auction winners is approximately two-and-a-half years from now. This will be the first real indication as to whether the CAF Phase II auction process successfully selected winning bidders that are able to build out new networks so that they can meet their voice and broadband service obligations required as a condition of their support. It will also be the first meaningful opportunity to determine whether the auction process established effective incentive and penalty structures to address incidences of non-compliance.

We do not yet know whether all of the CAF Phase II auction winners will be able to perform, but, if they cannot, the CAF Phase II auction rules lack a meaningful system for addressing failures of performance and how those winners' bids affected all other bids. The CAF Phase II auction rules' only response to failure of performance is reclamation of support from the defaulting winning bidder (protected by a letter of credit).[22] While this protects the Commission's investment, it leaves residents of the area won by the defaulting bidder without broadband service. And it fails to account for how that bidder's inability to deliver negatively affected other bidders across the nation.

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[21] *See, e.g., NPRM* ¶ 19.

[22] *See id.* ¶ 38.

Unlike the Commission's spectrum auctions, which selected a winner for each available area, the CAF Phase II auction pitted providers offering to serve different geographic areas against one another to compete for a limited pool of support. Thus, a bidder that is unable to perform affects the prices and outcome nationwide, not just in the geographic areas where it bid. As a result, auction participants that bid and win but cannot ultimately provide the required service can distort auction outcomes on a nationwide basis by displacing providers that could have performed and sending false signals about the amount of support that is needed in given areas.

As in the CAF Phase II auction, the Commission proposes a short-form review process as the primary means of ensuring that entities that are not capable of performing are not permitted to bid in the auction.[23] Because the technical components of short-form applications have been treated as confidential, however, the public has no visibility into how this process was actually conducted. Parties have alleged that some winning bidders in the CAF Phase II auction may not be able to perform as required,[24] and there are other situations where winning bidders' proposals have raised concerns but we do not yet know the outcome (*e.g.*, WISPs proposing to provide 100 Mbps service over unlicensed spectrum).[25] And, as noted above, the first actual performance deadline does not arise for approximately two-and-a-half years.

The Commission should therefore strengthen the auction rules in RDOF to ensure that only bidders who are demonstrably qualified and capable of performing, including providing

[23] *See id.* ¶ 68.

[24] *See, e.g.,* Ex Parte Letter from Jennifer A. Manner, Senior Vice President, Hughes Network Systems, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Apr. 8, 2019).

[25] *See* Reply Comments of the Rural Coalition, WC Docket No. 10-90, at 10 (filed Oct. 18, 2017).

reliable voice services, are able to participate in the auction. One way to do this is for the Commission to require that auction bidders obtain ETC designations before bidding in the auction. The ETC designation process is the states' opportunity to vet auction bidders and their service proposals. Delaying it until after the auction eliminates states' ability to help prevent unqualified bidders from participating and relegates the states to a role of being able only to nullify the auction result rather than shape it constructively.

Similarly, in order to ensure that bidders have sufficient operational scale and scope to accept the commitment to deliver broadband to large parts of rural America and to protect against entities basing entire business plans solely around their receipt of RDOF funding, the Commission should also consider additional steps to provide certainty that these scarce federal dollars are going to bidders that have sufficient experience to take those commitments seriously. There is a significant risk that a carrier has sufficient scale to deliver broadband if federal high-cost universal service funding represents a substantial percentage (*e.g.*, near or above 25 percent) of its 2019 revenues. While many participants in the CAF Phase II auction were privately held and the applications remain private, publicly available information suggests that companies with annual revenues as low as $20 million revenue and fewer than 100 employees submitted bids for annual funding over ten times that amount.[26] That type of bidding poses a substantial risk to the program. The Commission should consider limiting a bidder's eligibility to annual support equal to or less than 25% of a bidder's revenues from the year ending December 31, 2019 minus federal high-cost universal service support expected to be received from other sources during year 1 of the RDOF. Expressed as a formula:

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[26] *See, e.g.,* Dun & Bradstreet report for bidder Wisper ISP, showing annual revenues of $3 million and 52 employees, https://www.dandb.com/businessdirectory/wisperispinc.-mascoutah-il-25265320.html.

*Annual Eligibility = (2019 Revenue * 25%) – (High-Cost USF Expected RDOF Year 1)*

The Commission could also consider an upfront deposit or escrow payment – akin to the down payment in the spectrum auctions – or perhaps other requirements, to ensure that bidders have sufficient scale and experience to deliver on their obligations. These safeguards would support the Commission's objectives to require accountability and ensure that public investments are used to deliver intended results.[27]

## V. THERE ARE ADDITIONAL TRANSITIONAL ISSUES NOT CONTEMPLATED IN THE NPRM

Frontier supports the Commission's aim to transition high-cost universal service support from CAF Phase II to the RDOF. To ensure a smooth transition process for rural consumers and carriers, Frontier urges the Commission to adopt several other measures that have not been explicitly discussed in the *NPRM*. The RDOF represents the later stages of a longer-term transition from a long-gone assumption of ILEC monopoly and implicit subsidies to explicit, targeted broadband subsidies, and the Commission must adequately care for consumers and competition in this evolution. In this robustly competitive telecom marketplace, no carriers can afford to implicitly subsidize higher-cost areas.

### A. The Commission's Transition Plan Must Ensure that Rural Customers Retain Voice and Broadband Service, Including During the Transition from the End of CAF Phase II to the First Award of RDOF Support.

The *NPRM* poses questions regarding the termination of prior support mechanisms ahead of the implementation of the RDOF,[28] but it does so without considering the impact on consumers. This parallels the discussion in orders in the CAF Phase II auction proceeding

[27] *See NPRM* ¶ 12.

[28] *See id.* ¶¶ 94-104.

regarding transitions from prior support mechanisms to CAF Phase II.[29] The transition to RDOF is significantly different, however, in that the transitions to CAF Phase II generally were from support mechanisms that did not impose specific broadband deployment obligations, while the transition from CAF Phase II model-based support to the RDOF involves areas where consumers already have access to supported broadband service and therefore expect to retain that broadband service. Additionally, the scale of the proposed auction and the number of carriers implicated is orders of magnitude larger that the CAF Phase II auction.[30] In considering how to transition from prior support mechanisms to the RDOF, the Commission's focus should be squarely on ensuring that all consumers retain their voice and broadband service during the transition. As the *NPRM* notes, in 2014 "the Commission expected that it would have conducted the subsequent auction before the [CAF Phase II offer of model-based] support term had ended."[31] Its discussions of "the 'limited scope and duration' of the CAF Phase II offer of model-based support" such that "[p]rice cap carriers had no expectation of receiving ongoing support beyond the additional optional year in these areas once the CAF Phase II support term had ended" were based on this expectation.[32] As the *NPRM* acknowledges, however, it is now apparent that an RDOF auction "is unlikely to conclude before model-based support for price cap carriers is

[29] *See, e.g., Connect America Fund, et al.,* Report and Order, 29 FCC Rcd 15644, 15679 ¶ 98 (2014) (transition from frozen support to model-based support); *Connect America Fund,* Report and Order, FCC 19-8 (rel. Feb. 15, 2019) (transition from frozen support to support awarded in CAF-II auction).

[30] By comparison, the CAF-II auction awarded only $1.48 billion over ten years to serve 713,176 locations. *Connect America Fund Phase II (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due Oct. 15, 2018,* Public Notice, 33 FCC Rcd 8257 (WCB WTB 2018).

[31] *NPRM* ¶ 102.

[32] *Id*.

expected to end."[33] As a result, the Commission is correct to "seek comment on whether to revisit the transition period from CAF-II model-based support to Rural Digital Opportunity Fund support."[34]

Indeed, when it laid out the plan for the CAF in price cap territories in the *Transformation Order*, the Commission appropriately concluded that, if the competitive bidding mechanism to follow the model-based term of support "is not implemented by the end of the five-year term of CAF Phase II [later extended to six years in light of the increase in required speed], the incumbent ETCs will be required to continue providing broadband with performance characteristics that remain reasonably comparable to the performance characteristics of terrestrial fixed broadband service in urban America, in exchange for ongoing CAF Phase II support."[35]

Given that the Commission's 2014 prediction of an orderly transition period did not pan out, the Commission's earlier determination that price cap carriers will be required to continue providing voice and broadband services to their customers in exchange for the continuation of support should prevail.

### B. A Transitional Mechanism is Needed Where New Entrants are Awarded RDOF Support.

One necessary step in ensuring that consumers retain existing supported voice and broadband services is not to withdraw current CAF Phase II support until RDOF service is actually in place. The Commission proposes a six-year build schedule, with 100% build-out

[33] *Id.* ¶ 101.

[34] *Id.*

[35] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17726-17727 ¶ 163 (2011).

required at the end of year six.[36] As the Commission determines which carriers will be eligible for RDOF support, it must not undermine those companies that have already explicitly committed to carrying out the Commission's broadband deployment goals and have an ongoing obligation to provide broadband and voice services, due in part to overlapping state and federal jurisdiction. As such, if the RDOF winner in a given area is not the incumbent price cap carrier, the Commission must continue to provide an appropriate amount of support to existing CAF Phase II providers on a transitional basis to continue providing voice and broadband services. This support can be phased out at the inverse of the deployment milestone. For example, when an RDOF recipient hits the 40% service milestone under the Commission's framework, the CAF Phase II provider's support is reduced to 60%; when the RDOF recipient hits the 60% milestone, the CAF Phase II provider's transition support is reduced to 40% of the original; and so on.

Based on the six-year buildout milestones, a common-sense transitional support mechanism would operate as follows:

| | New Carrier Obligation | Transitional Broadband Support |
|---|---|---|
| End of Year 1 | 0% | 100% |
| End of Year 2 | 0% | 100% |
| End of Year 3 | 40% | 60% |
| End of Year 4 | 60% | 40% |
| End of Year 5 | 80% | 20% |
| End of Year 6 | 100% | 0% |

Without such transitional support and consideration of these transitional issues, consumers risk being left without viable service from an ETC for the areas as the new ETC

[36] *See NPRM* ¶ 28.

works to build out. The Commission could and should consider requiring an ETC to provide 100% voice service on day one. But even if voice is required day one, the Commission's RDOF proposal acknowledges that faster broadband deployment will necessarily take time. The Commission could similarly require broadband at least as fast as is already in place on day one from the winner. Or, the Commission could compensate the existing provider for maintaining existing high-cost services. What the Commission cannot do is require or expect carriers to provide broadband or voice support without sufficient funding. Failing to adequately plan for this first-of-its-kind transition would represent an abdication of the Commission's duty to promote universal service.

### C. The Commission's Transition Plan Must Include Areas Where There is No RDOF Winner.

The *NPRM* does not explicitly contemplate what to do if there is no auction winner.[37] Yet, based on the experience in the CAF II auction, the Commission must plan ahead for areas where there is no winning bidder in the RDOF auction. Price cap carriers cannot subsidize high-cost areas without sufficient support. Failure to plan for this situation risks leaving consumers without service or imposing unsustainable mandates on just one type of carrier. Absence of a plan for the remote areas not included in the model-based offers of support created an unsustainable unfunded mandate on price cap carriers. While the award of model-based support based on statewide offers and the prospect of additional funding for those areas in the CAF Phase II auction somewhat obscured the problem then, price cap carriers cannot be expected to subsidize any areas left over from the RDOF auction and can only be expected to serve them if

[37] *See NPRM* ¶¶ 94-104.

there is sufficient support. The statute is clear – if the Commission wishes to ensure universal service, it must provide sufficient support.[38]

As a result, in areas where there is no RDOF auction winner, the Commission should offer the existing price cap carrier – at its election – sufficient support to continue providing broadband and voice service. If such support is not available to fill these gaps, price cap carriers serving these areas may find it difficult, if not impossible, to continue to provide service given the economic realities of the situation.

### D. Absent Support, Price Cap Carriers Must Be Excused from Incumbent Obligations.

To the extent that a price cap carrier ceases to receive support in supported areas – *i.e.*, it is not the awardee for RDOF support in any portion of its incumbent service territory or if the Commission decides not to provide transitional support for any period between December 31, 2020, and the authorization of RDOF support – price cap carriers must be released from their incumbent obligations, including any obligation to provide voice services, in the unfunded areas. Section 254 of the Communications Act makes clear that universal service support must be "sufficient,"[39] and Section 214(e)(3) only allows the states or the Commission to impose upon a carrier the obligation to serve an area if the carrier is permitted to receive universal service support for doing so.[40]

More fundamentally, however, it is inequitable and discriminatory to impose the obligations of an incumbent carrier in an area where support is necessary without providing such

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[38] 47 U.S.C. § 254(e).

[39] *Id.* § 254(b)(5).

[40] *Id.* § 214(e)(3).

support. Indeed, doing so would be an "unfunded mandate" and an "arbitrary and capricious demand" like that which Chairman Pai has vociferously opposed.[41] In this regard, the Commission has already granted price cap carriers forbearance from their voice obligation when another ETC wins support in a CAF-eligible area.[42]

Under these circumstances, however, price cap carriers are still required to maintain existing voice service unless and until they receive authority under Section 214(a) to discontinue that service.[43] Fundamentally, the purpose of Section 214 is to ensure that a community is not left disconnected because a provider exits the business. In a situation where the Commission designates another carrier to serve the area through the award of RDOF support, this statutory condition permitting the carrier to exit the market is *per se* met. As a result, in such cases, the Commission should forbear altogether from the Section 214 notification process or, at a minimum, allow for discontinuance on 30 days' notice.[44]

The Commission also should preempt state application of carrier-of-last-resort obligations to ILECs in areas where the FCC has designated another provider as the recipient of

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[41] *See Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks, et al.,* Memorandum Opinion and Order, 31 FCC Rcd 6157, 6243-44 (2015) (Statement of Commissioner Ajit Pai Approving in Part and Dissenting in Part).

[42] *See NPRM* n. 184; *Connect America Fund*, Report and Order, 29 FCC Rcd 15644, 15663 ¶ 51 (2014).

[43] *See id.* at 15663 ¶ 51.

[44] Under the Commission's current streamlined Section 214 process, a carrier must show that it provides a stand-alone interconnected VoIP service throughout its affected service area, and that at least one other stand-alone facilities-based voice service is available from another provider. *See* 47 C.F.R. § 63.71(f). In the alternative, carriers can apply for relief under the "adequate replacement test."

universal service support with concomitant obligations to serve. Requiring the ILEC to continue to provide voice service in difficult-to-serve high-cost areas when the ILEC is no longer receiving universal service support would be "inconsistent" with the federal universal service mechanism and therefore barred by Section 254(e).[45]

To clear away regulatory underbrush that would serve only to further handicap incumbents under these circumstances, the Commission also should relieve incumbents of all other legacy requirements based on "incumbent" local exchange carriers' historical status as a monopoly provider. When the Commission pays another carrier to be the provider of the last resort, and: (1) no support is available to any provider due competition already existing; or (2) another carrier offers qualifying RDOF voice service,[46] all legacy incumbent regulations, which are founded on an assumption of an ILEC monopoly, are inappropriate. Plainly, when the Commission is paying another carrier to serve an area, the forbearance test is met. First, incumbent regulations are unnecessary to ensure charges and practices are just and reasonable because another carrier is providing service.[47] Second, enforcement is not necessary for the protection of consumers because the Commission is paying another carrier to be there under

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[45] 47 U.S.C. § 254(e). Maintenance of state carrier-of-last-resort obligations after federal support had been withdrawn also would violate the requirement that state universal service requirements must be supported by equitable and non-discriminatory contributions by all providers of telecommunications in the state. *Id.*

[46] With ViaSat submitting winning bids in the CAF-II auction and the Commission's proposal to include satellite in the RDOF auction, there is no basis for treating satellite as a competitor for RDOF support and not more generally in the market when evaluating whether ILECs are entitled to regulatory relief from outdated regulatory obligations. Treating satellite as a competitor when it comes to ILEC regulatory support and not when it comes to evaluating ILEC regulatory relief would be logically inconsistent.

[47] *See* 47 U.S.C. § 160(a)(1).

Commission regulations.[48] And third, forbearance from applying such provision or regulation is consistent with the public interest because the Commission has determined another carrier is better situated to serve there and relieving the existing carrier of obligations will free capital associated with those requirements so the carrier can compete elsewhere.[49] The Commission cannot require regulation of a carrier as a monopoly while simultaneously paying to overbuild that carrier.[50]

## VI. CONCLUSION

Frontier is committed to extending broadband service to rural customers. Frontier respectfully requests the Commission to adopt the RDOF consistent with Frontier's comments in order to maximize broadband deployment under the program.

Respectfully submitted,

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[48] *See id.* § 160(a)(2).

[49] *See id.* § 160(a)(3).

[50] These regulations include, but are not limited to, all incumbent pricing regulations, incumbent tariffing obligations, and incumbent interconnection and unbundling obligations.